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ON THE LAW OF THE SEA**

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For participants only

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SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE FORTIETH MEETING

Held at the Parque Central, Caracas,
on Wednesday, 14 August 1974, at 4 p.m.

<u>Chairman:</u>	Mr. AGUILAR	Venezuela
<u>Rapporteur:</u>	Mr. NANDAN	Fiji

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REGIME OF ISLANDS (continued)

Mr. MORALES (Venezuela) said that Venezuela attached great importance to the question of islands, as most of the islands in the chain along its coast were subject to the indivisible exercise of Venezuelan territorial sovereignty, even though the continuity of the chain was broken by islands under the sovereignty of another State. The Venezuelan islands also had archipelagic characteristics.

Article 1 of the 1958 Convention on the Continental Shelf and article 10 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, both of which Conventions were ratified by Venezuela, did not make the maritime jurisdiction of islands depend on their area, the length of their coasts, or any other criterion extraneous to the existing definition. He was pleased to note that the ideas underlying those provisions were shared by many delegations, as shown in documents A/CONF.62/C.2/L.30 and L.50 and by the statement of the representative of Trinidad and Tobago at the previous meeting.

His delegation supported document A/CONF.62/C.2/L.58, but felt that the proposal in it should be supplemented by recognition of the right of the inhabitants of the territories to which it referred to exploit resources in accordance with their needs and requirements, as stated in document A/CONF.62/C.2/L.30. That solution was a just one in that it allowed for the development needs of the inhabitants of dependent territories.

Mr. AMATO (Uruguay) said that his delegation, as a sponsor of document A/CONF.62/C.2/L.53, believed that a colonial or occupying Power could not validly invoke or exercise for its own benefit rights which belonged either to the sovereign State established when the colonial yoke was removed or to the sovereign State to which the occupied territory legitimately belonged.

His delegation did not deny that certain rights would be recognized or established by the Convention for the benefit of the territory as such, irrespective of whether it was occupied or under colonial domination. That was clearly reflected in the phrase 'as long as that situation persists'. However, those rights could not be exercised or invoked by those who were not entitled to them. To provide the contrary would be to allow those rights to be usurped. The new law of the sea should be based on principles of justice and respect for self-determination and sovereignty and could not serve directly or indirectly to consolidate unjust or unlawful situations.

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Mr. QUENCUEDEC (France) said that his delegation, as it had stated during the debate on archipelagos, believed that there was no legal justification for any distinction between continental land masses and islands with regard to the establishment of a zone where economic rights would be exercised, unless it was possible to arrive at a formula which took into account the divergent interests of the various States involved. The various proposals concerning islands submitted to the Sea-Bed Committee and to the Conference demonstrated the practical impossibility of arriving at such a formula, since almost all of them aimed essentially at limited and unrelated objectives. As the representative of Trinidad and Tobago had demonstrated, those proposals, in attempting to satisfy particular interests - however legitimate those interests might be - entailed ingenious criteria and resulted in complex formulae which led other delegations to submit further proposals designed to solve the artificial difficulties that the original proposals created.

Certain proposals could not be retained in the form in which they had been submitted. Document A/CONF.62/C.2/L.30, for example, contained some interesting provisions, but its part B was difficult to accept in its present form as it appeared to deny territories which had not attained independence or autonomy "following an act of self-determination under the auspices of the United Nations" economic rights over maritime resources. Did that mean territories attaining independence or autonomy outside United Nations auspices would be deprived of their natural rights over the resources of adjacent maritime areas? His delegation believed that it was impossible to make distinctions among islands, since that would amount to denying to certain island territories generally recognized economic rights. It was unnecessary to include particular provisions on that subject in the Convention because of the recognized principle of the sovereignty of States.

However, if it was deemed necessary to lay down express rules, it would be sufficient to have a clause applying the fundamental rules of the sovereignty of States over all their territories, including islands, and recognizing the consequent rights.

The only real problem created by the existence of islands was that of delimiting areas under national jurisdiction. On that question also the various proposals that had been submitted seemed designed to cover particular or local situations. It should be possible to find a general rule allowing respect for the requirements of equity

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(Mr. Quencudec, France)

while leaving the door open for the consideration of the facts of each situation. In that regard the proposal in document A/CONF.62/C.2/L.28 reflected a viewpoint which deserved attention. The presence of islands or islets was, in fact, a special circumstance which should be taken into account when dealing with delimitation problems. Such problems in any case, could be solved only through direct agreement between the parties concerned.

Mr. PONCE ENRIQUEZ (Ecuador) said that document A/CONF.62/C.2/L.58, of which his delegation was a sponsor, was so important that it could not fail to enlist the support of countries which believed in justice and in putting an end to the rule of force. It was inspired by concepts of liberty and independence and designed to ensure that the oppressive colonial Powers would find it more and more difficult to continue along the path of exploitation and injustice.

The Conference was working to establish a just and equitable system of international co-operation which would make it possible to narrow the enormous gap between rich and poor countries. Despite the process of liberation from colonialist régimes and despite the Declaration on the Granting of Independence to Colonial Countries and Peoples, there were still territories, including territories in the Americas, occupied by foreign Powers. The rights laid down in the Convention must not be used by those Powers to maintain their hegemony and to perpetuate the injustices created for their exclusive benefit. Those rights existed in order to facilitate the development and progress of free peoples. In keeping with the new concepts which should underlie the Convention, they legitimately belonged to the inhabitants of the territories.

The peoples of the world were moving ever more rapidly towards liberty and independence and towards a greater awareness of the need to acquire or claim them. Certain Powers, on the other hand, were speaking of the need for a political realism which divided the world into two areas for the purpose of distributing the benefits gained through intimidation. Neither that kind of political realism nor the continuation of colonial régimes was acceptable to his delegation. What had to be recognized, instead, was the indomitable strength of the countries which were striving for a just law of the sea. It was blindness not to accept that reality and to draw the logical conclusions from it.

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Mr. ROBINSON (Jamaica) endorsed the statement of the representative of Trinidad and Tobago, particularly as it related to the rights of island territories such as those which constituted the Associated States of the Caribbean.

In view of the inequities of the past, provisions such as those in articles 3 and 4 of his delegation's draft articles (A/CONF.62/C.2/L.35) should be included in the Convention. Such provisions should relate not only to islands but to all territories under foreign domination, and should relate to all rights conferred by the Convention, not just those relating to the economic zone. Part B of document A/CONF.62/C.2/L.30, which contained a useful formulation, could be amended to cover the latter point.

In principle, his delegation supported the view that every island generated and was entitled to its own territorial sea, economic zone and continental shelf. It could not endorse the view that an island's maritime space should be determined according to criteria different from those used for continental land masses. That approach would be legitimate if it were possible to isolate criteria which applied only to islands, but criteria such as size and population were as applicable to continental land masses as they were to islands, and it was difficult to understand why they should be used only to determine the maritime space of islands.

Mr. JACOVIDES (Cyprus) said that the proper treatment of the question of islands in accordance with the requirements of international law and equity was of vital national interest to his delegation and also a test of whether the new convention would be based on fairness and objectivity.

His delegation's fundamental position, set forth in its statements at the 40th plenary meeting and at previous meetings of the Second Committee, was that no distinction whatsoever should be made between islands, irrespective of their size and population, and continental land masses, and that the principles for determining the territorial sea, the continental shelf and the economic zone of islands should be exactly the same as those that were applied in determining the corresponding national jurisdictions of continental land masses.

His delegation's position was firmly based on existing law and practice; he wished to refer in that regard to article 10 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, and article 1 (b) of the 1958 Geneva Convention on the Continental Shelf. He was accordingly gratified to note that that position was shared by

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(Mr. Jacovides, C.)

large number of States, and not only by island States. His delegation particularly wished to associate itself with the views expressed by the representative of Trinidad and Tobago and by the sponsors of document A/CONF.62/C.2/L.30.

In the case of opposite or adjacent States, delimitation should, in the absence of agreements freely arrived at on the basis of equality, be based on the median line principle, which was equitable and firmly based in existing law. To avoid discrimination, that line should be measured from the insular as well as from the continental baselines.

His delegation hoped that the Conference would not allow itself to be swayed by attempts to promote narrow national interests, to the detriment of the legitimate rights of islands, which were based on such principles as the sovereign equality of all States.

Mr. SENTISO GALVEZ (Guatemala) stressed his delegation's deep interest in all questions relating to the liberation of peoples under colonial domination. In view of that interest, it had co-sponsored document A/CONF.62/C.2/L.58. In order to leave no doubt of his delegation's position in the event that that proposal was not adopted, he wished the following statement to be placed on record: Guatemala would not accept the application of any provision of the convention or conventions that the Conference might adopt, nor would it recognize any rights deriving therefrom, either in or for territories occupied by foreign Powers, in usurpation of the legitimate sovereign rights of other States over those territories.

Mr. KEDADI (Tunisia) said that the handful of countries which had done their utmost to prevent the inclusion of item 19 in the agenda and to delay its discussion were those whose interests were protected by the provisions of the 1958 Geneva Conventions relating to the régime of islands. Those provisions offered only a weak definition of an island and granted them the same rights as it granted continental land masses.

Such a situation largely favoured those countries which had been able to extend their power over a large number of islands, while it was detrimental to the developing countries, which had not participated in the elaboration of the 1958 Geneva Conventions and which for the most part did not possess any islands. It was also unfavourable to all land-locked and other geographically disadvantaged States, which, having expected an equitable distribution of the resources of the international zone, were justly

(Mr. Kedadi, Tunisia)

concerned at seeing that concept rendered meaningless by the exaggerated claims of countries possessing islands, particularly when the concept of the 200-mile economic zone and that of archipelagic States promised to become a reality.

The OAU Declaration (A/CONF.62/33) was an attempt to resolve that conflict of interests and establish objective and equitable rules, and his delegation had demonstrated its full support for part B of that Declaration by co-sponsoring documents A/AC.138/SC.II/L.40 and L.43 and also document A/CONF.62/C.2/L.28, on delimitation.

A solution could be found only if the relevant clauses of the 1958 Geneva Conventions were tightened up and made more precise. To that end, he wished to introduce, on behalf of his own delegation and those of Algeria, Dahomey, Guinea, Liberia, Madagascar, Mali, Mauritius, Mauritania, Morocco, Senegal, Upper Volta and Zambia, some draft articles on item 19.*

Articles I and II defined as accurately as possible the size of the different areas and the elevations of islands, their degree of proximity to the coast, and the various factors that should be taken into account for the purposes of delimitation.

The provisions of article III would ensure that non-adjacent islands were not used for delimitation between adjacent or opposite States. That principle was in line with the provisions of document A/CONF.62/C.2/L.28.

Under article IV, the provisions of articles I and II would not apply to insular or archipelagic States, and a coastal State would not be entitled to claim rights based on the controversial concept of archipelagos by reason of its exercise of sovereignty over a group of islands situated off its coasts.

Article V, which concerned islands under colonial domination or foreign occupation, provided that the rights to the maritime spaces and to the resources thereof belonged to the inhabitants of those islands and must profit only their own development.

The sponsors trusted that their proposal would be taken into account in the preparation of the informal working paper to be produced on item 19.

Mr. TANOE (Ivory Coast) requested that his delegation be included in the list of sponsors of the proposal introduced by Tunisia.

* Subsequently circulated as document A/CONF.62/C.2/L.62.

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Mr. VENCHARD (Mauritius), speaking as a sponsor of that proposal, said that article V gave concrete form to operative paragraph 10 of the OAU Declaration, and was very similar to part B of document A/CONF.62/C.2/L.30; it would ensure that the resources of islands under colonial domination or foreign occupation were vested in the inhabitants of such islands. In the case of inhabitants who had been displaced - a situation not provided for in that article - his delegation considered that their rights should not be affected by their displacement.

Mr. DUDGEON (United Kingdom) said that the question of islands was particularly important to the United Kingdom which itself consisted of a group of islands.

There was an immense diversity of island situations, ranging from large and populous islands forming part of even larger continental States to small islands with self-sufficient populations. The world community had already drawn up a body of rules for the maritime spaces of islands, including the rule that islands were entitled to a territorial sea and a continental shelf and the rule on drawing straight baselines round fringes of islands along the coast. There were, however, no rules classifying islands into different types.

Attempts had nevertheless been made at the Conference to divide islands into different categories by reference to various criteria, including size, population, position and political status. However, his delegation did not believe that that approach could result in any generally applicable rules that would be equitable in all cases. Indeed any such formulation was in grave danger of discounting many islands of both absolute and relative importance.

One criterion suggested was that of population. In various parts of the world, even in very recent times, several islands which had been inhabited and even self-sufficient had become uninhabited as a result of temporary or long-term changes in climate or economics. Other small islands, formerly uninhabited, had been populated or repopulated. Particularly where the economy of States, or regions of States, with such islands was precarious, it would be grossly unfair to deprive them of, say, an economic zone which might prove a more permanent and certain means of achieving satisfactory development in the face of otherwise overwhelming geographical disadvantages.

A second criterion suggested was that of size: but there were large islands which were largely or completely uninhabited and small ones with dense populations which depended heavily upon the sea.

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(Mr. Dudgeon, United Kingdom)

A third criterion put forward was the distance of an island from the mainland. In the case of island States and archipelagos, however, it was not possible to say in every case which island constituted the mainland.

A fourth criterion was the position of an island in relation to the coast of a foreign State. Reference had been made to an island situated within the territorial sea or on the continental shelf of a neighbouring State. However, in his delegation's view that begged the whole question. The island was entitled to a territorial sea of its own. The continental sea belonged to the island as much as to the neighbouring State. The real question was that of delimiting the territorial sea and the continental shelf between the two, and the same applied to the economic zone.

With respect to islands which had not yet attained independence, his delegation largely shared the view of the delegation of Trinidad and Tobago. So far as the dependent territories for which the United Kingdom Government was responsible were concerned, in most cases the principal reason for their continuing dependence was uncertainty about their economic viability. To deprive such territories of any right to an economic zone could only increase that uncertainty and make the attainment of independence more difficult. His delegation considered that the proposals in that sense would have the opposite effect to that which their sponsors presumably had in mind, and it could not support them.

The kind of detailed rules and principles proposed would inevitably bring about the very inequity which they purported to avoid. The existing law and State practice with regard to islands and their maritime spaces, reflected in proposals such as those of part A of document A/CONF/62/C.2/L.30, was perfectly adequate and should remain undisturbed. With respect to the question of delimitation of boundaries, the provisions of article 12 of the Territorial Sea Convention and article 6 of the Convention on the Continental Shelf, which laid down the three-part rule of agreement, special circumstances and median line were adequate and sufficiently flexible. Those rules already allowed for all the different circumstances existing: there was a risk in trying to do too much.

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Mr. BENCHERKH (Algeria) said that his delegation had already given the essence of its position with regard to islands in its statement on archipelagic States. He therefore merely wished to endorse the arguments put forward by the representative of Tunisia when introducing the draft articles on the regime of islands (A/CONF.62/C.2/L.62) of which his delegation was a sponsor. He had noted with satisfaction the growing trend in favour of including in the future convention provisions which took account of the special circumstances of islands. With regard to islands lying in an enclosed or semi-enclosed sea which were neither island nor archipelagic States, while his delegation had no intention of questioning the sovereignty of States over the different parts of their territory, including islands, it could not accept the attempt by some delegations to use that idea of sovereignty as a legal justification for the recognition of right to marine space over which it already had rights as a continental coastal State, thus claiming double rights to those waters, both for itself and for the islands which were in fact part of its territory. That argument would also lead to an unequal sharing of resources between coastal States in narrow seas. It was therefore unacceptable to the Conference and to the international community as a whole.

Any such delimitation must be done by bilateral or regional agreement according to principles of equity taking account of special circumstances in the interests of all the States concerned. That was a principal advantage of the draft articles (A/CONF.62/C.2/L.62) which he hoped would be carefully considered by the Committee and receive the support of many delegations.

Those considerations applied to narrow seas such as enclosed or semi-enclosed seas. More appropriate solutions based on the draft articles could be worked out for other circumstances, provided that such solutions were reasonable and took account of the overriding concept of the common heritage of mankind.

The future convention should ensure the preservation of the inalienable rights of peoples still under colonial domination in all fields, as proposed in draft article V of the document, and in accordance with the provisions of the Organization of African Unity Declaration on the Issues of the Law of the Sea.

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Mr. CASTANEDA (Mexico) expressed his delegation's support of the draft articles introduced by the representative of Tunisia, of which it wished to become a sponsor. The aim of article V was not to sow discord or to prejudice in any way the interests of States but to stress that colonial status could not have a permanent, legal basis but must be purely temporary. The principle of non-recognition of colonial domination should be as generally recognized as that of the non-recognition of legitimate title to territory acquired by force. The draft articles therefore expressed that principle and clearly stated that the occupying metropolitan Power had no right to the maritime spaces around those islands or to the resources thereof.

There was an immense diversity of island situations, as the United Kingdom representative had said, and it would be difficult, if not impossible, to draft regulations to cover them all. Any basic norms must reflect the provision in document A/CONF.62/C.2/L.30 that the extent of the territorial sea of an island must be determined in accordance with the provisions applicable to other land territory. There could however, be exceptions based on principles of equity.

Mr. RASOLONDRALIBE (Madagascar) said that, as the representative of an island State, he was fully aware of the difficulty of distinguishing between an island State, an island and an islet. The draft articles were therefore aimed at giving clear definitions. There were three issues related to islands: sovereignty, maritime rights, and delimitation. With regard to the first two, there was no problem in the case of island States, but the rights of the inhabitants of islands under foreign domination or control must be clearly stated. Although the remaining continental States under colonial domination were the most difficult and serious issues with which the Special Committee of 24 had to deal, they were now very few in number and most of that Committee's work was concerned with islands. His country supported the establishment in the future convention of the rights to the territorial sea and the economic zone not only of those islands which were on the agenda of the Special Committee but also of any other islands, however small, which were not yet economically and politically independent.

Delimitation was dealt with in draft article II, which was very clear.

Mr. MALINTOPPI (Italy) said that, in the régime of islands, the question of the territorial sea was easy to resolve because the territorial sea was a constituent

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(Mr. Malintoppi, Italy)

part of the territory of the State and must follow the regulations established for its land territory. The 1958 Geneva Convention on the Continental Shelf had also established the coastal State's rights to the sea-bed and subsoil of areas surrounding islands in the same way as those adjacent to its land territory. Although in the Sea-Bed Committee his delegation had never expressed great sympathy for acquired rights, it considered that if States already enjoyed rights to the continental shelf, they should be respected. A certain flexibility was, however, called for in drafting provisions for the new concept of the economic zone and the rights and duties of States in that connexion, since the Conference was engaged in developing progressive international law.

With regard to the delimitation of marine space which included islets and rocks, there were certain difficulties inherent in any attempt to bring provisions concerning them into line with the 1958 Geneva Conventions. Endeavours had been made to establish lists of criteria to be followed in that delimitation, but any such criteria tended to become arbitrary because they did not take account of special circumstances. It was therefore necessary to include a safeguard clause covering such circumstances, but the only really equitable solution must be in line with the judgement of the International Court of Justice in the North Sea continental shelf cases and could not be based on abstract criteria, especially in view of the infinite variety of island situations.

Mr. DE ABAROA Y GONI (Spain) said that in his delegation's view the following criteria should be taken into account in regulating the complex and difficult question of islands.

Firstly, a generally acceptable definition of islands had to be established. That could be done by distinguishing islands from other geographical conformations which must also be defined with precision. Such a step would have the advantage of not including an over-general but rather a specific idea of islands in the future codification. In that connexion, he said that some of the proposals put forward contained elements that would be very useful in establishing the concept and legal régime to be applied to islands.

Secondly, if the future convention, following the 1958 codification, were to retain the assumption of "special circumstances" for delimitation, it would be necessary to specify the territories to which such special circumstances should apply. The mere

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(Mr. De Abaroa y Goñi, Spain)

presence of islands in a maritime space did not constitute per se a special circumstance; if it were so considered, the danger already existing in the imprecise idea of special circumstances, would be intensified, and it would become extremely difficult for neighbouring States to negotiate on delimitation of maritime spaces close to islands.

Thirdly, an appropriate method must be found to solve the problem of the régime of islands. In his delegation's view the point of departure should be equal treatment for all parts of a State, whether continental, insular or archipelagic. Moreover the régime of islands must be based on the following fundamental principles: firstly, the territorial unity and integrity of the State, including the territorial waters and the air space above them; secondly, the indivisibility of the sovereignty of the State over its territory, continental or maritime; and lastly the sovereign equality of all States, great or small, insular or archipelagic, continental or "mixed".

Those general criteria would, in his delegation's view, provide a satisfactory solution for the delimitation of maritime spaces under the jurisdiction of neighbouring or opposite States and allow for adaptation in exceptional cases.

The CHAIRMAN announced that the discussion on item 19 had been concluded.

TRANSMISSION FROM THE HIGH SEAS (A/9021; A/CONF.62/C.2/L.54)

Mr. DUDGEON (United Kingdom) drew attention to document A/CONF.62/C.2/L.54 submitted by the nine States of the European Economic Community, and in particular to article 21 ter, which referred to co-operation in the repression of unauthorized broadcasting from the high seas. That article had been included in a working document on the high seas and was extremely relevant to the item before the Committee. His delegation hoped that its provisions would be included in any further working document on the subject.

The CHAIRMAN agreed that would be done.

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OTHER QUESTIONS

The SECRETARY announced that 28 other delegations wished to join the sponsors of document A/CONF.62/C.2/L.42/Rev.1. They were: Algeria, Argentina, Burma, Brazil, Chile, Colombia, Cuba, Cyprus, Ecuador, El Salvador, Ghana, India, Iran, Jamaica, Libyan Arab Republic, Mauritania, Mauritius, Morocco, Nigeria, Panama, Peru, Philippines, Senegal, Trinidad and Tobago, United Republic of Cameroon, Uruguay, Venezuela and Yugoslavia.

The meeting rose at 5.45 p.m.